

**FILED**

**JUL 26 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAVIER BONNILLA-GUTIEREZ,

Defendant - Appellant.

No. 04-30401

D.C. No. CR-02-00163-001-MJP

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Western District of Washington  
Marsha J. Pechman, District Judge, Presiding

Submitted July 24, 2006<sup>\*\*</sup>

Before: ALARCÓN, HAWKINS and THOMAS, Circuit Judges.

Javier Bonnilla-Gutierrez appeals from the 87-month sentence imposed following his guilty-plea conviction for conspiracy to distribute

---

<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846.

We have jurisdiction pursuant to 28 U.S.C. § 1291.

Because Bonnilla-Gutierrez was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 915-16 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional error).

**REMANDED.**